

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

JUANA HERNANDEZ AS ADMINSTRATRIX	)	
OF THE ESTATE OF DANNY NICACIO, and	)	
ARMANDO MAISONET,	)	CIVIL ACTION NO. 05-40141FDS
Plaintiffs	)	
	)	
v.	)	
	)	
SCOTTSDALE INSURANCE COMPANY and	)	
UTICA MUTUAL INSURANCE COMPANY,	)	
Defendants	)	

**PLAINTIFFS' MOTION FOR LEAVE TO FILE IN FEDERAL COURT A COPY OF  
THE SURREPLY PAPERS FILED IN THE SUPERIOR COURT IN OPPOSITION TO  
DEFENDANTS' SUPERIOR COURT MOTION TO DISMISS**

Plaintiffs hereby request leave to file with this Court a copy of the following:

'Plaintiffs' Surreply in Support of its Opposition to Defendants' Motion to Dismiss'. Plaintiffs make this request, because defendants' recent filings omit mention that Plaintiffs' challenge to the Superior Court motion to dismiss is not only a constitutional challenge; plaintiffs contend the subject statute is inapplicable to the underlying civil action at issue as well. Moreover, plaintiffs want to bring to this Court's attention the fact that the Massachusetts Attorney General's Office will shortly be filing its amicus briefs in support of Plaintiffs' actions.

WHEREFORE, Plaintiffs hereby respectfully request that this Court grant leave to allow Plaintiffs to file with this Court one copy of the Superior Court Surreply Memoranda. Such a filing will complete this Court's perspective of the dispute pending in Superior Court – a dispute which is presently scheduled for a hearing in the Superior Court on March 27, 2006. As a consequence of the involvement of state and federal intervenors, it is likely that the Superior Court will not actually rule on the pending motions to dismiss and oppositions thereto, until May or June of this year.

**Local Rule 7.1 Certification**

I, Hector E. Pineiro, counsel for the plaintiffs hereby certify that I conferred with counsel for defendants, Caryn Daum, and attorney Daum confirmed on February 23 that she would not assent to my filing a copy of the surreply with this Court. I made a good faith effort to resolve the matter at issue concerning same.

/s/ Hector Pineiro

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Respectfully submitted,

**Juana Hernandez and Armando Maisonet,**  
By their Attorneys,

/s/ Robert H. Beadel

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CERTIFICATE OF SERVICE

I, Robert H. Beadel, hereby certify that, on this date, I served a copy of the foregoing document by first class mail on all recipients in the attached list.

James T. Scamby, Esquire  
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John Steinmetz, Esquire  
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Dated: 3/7/06

/s/ Robert H. Beadel